

## Railroad Retirement Board

## § 322.7

did not take his vacation during such year; or

(2) The payment is made after the employee's death, or after he ceased service for the purpose of receiving an annuity, and the payment is credited to the employee's last day of service; or

(3) It is otherwise established that the parties intended the payment to be in lieu of vacation, without reference to any particular period.

[Board Order 59-73, 24, 2487, Mar. 31, 1959, as amended at 65 FR 14460, Mar. 17, 2000]

EFFECTIVE DATE NOTE: At 65 FR 14460, Mar. 17, 2000, § 322.5 was amended in paragraph (c)(2) by removing "in accordance with § 222.3(h) of this chapter", effective Apr. 17, 2000.

### § 322.6 Pay for time lost.

(a) *Definition.* The term "pay for time lost" means any payment made to an employee with respect to an identifiable period of time during which the employee was absent from the active service of the person or company making the payment, including absence on account of personal injury. The entire amount paid to an employee who was absent on account of personal injury is pay for time lost if such amount includes pay for time lost, unless at the time of payment the parties, by agreement, specify a different amount as the amount of the pay for time lost and the period of time covered by such pay. The amount allocated to time lost is remuneration for every day in the period of time lost. The amount of a payment for personal injury that is apportioned to factors other than time lost is, nevertheless, a portion of "damages" for the purposes of part 341 of this chapter.

(b) *Employment relationship required.* Pay for time lost shall not be deemed to have been earned on any day after the day of the employee's resignation or other termination of his employment relationship.

(c) *Initial evidence.* A report that an employee has received or is to receive pay for time lost shall, in the absence of evidence to the contrary, be considered sufficient for a finding that remuneration is payable with respect to

each day in the period to which the pay is assigned.

[Board Order 59-73, 24, 2487, Mar. 31, 1959, as amended at 65 FR 14460, Mar. 17, 2000]

EFFECTIVE DATE NOTE: At 65 FR 14460, Mar. 17, 2000, § 322.6 was amended by revising paragraph (a), effective April 17, 2000. For the convenience of the user, the superseded text follows.

### § 322.6 Pay for time lost.

(a) *Payments included.* A payment shall be regarded as "pay for time lost" if it is made with respect to an identifiable period of absence from the active service of the person or company making such payment, including absence on account of personal injury. The entire amount of a payment made by an employer with respect to a personal injury shall be deemed to be pay for time lost if such amount includes pay for time lost and is not, at the time of payment, specifically apportioned to factors other than time lost. If an amount paid with respect to personal injury is, at the time of payment, apportioned to factors other than time lost, only that part of the amount not so apportioned shall be deemed to be pay for time lost.

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### § 322.7 Dismissal, coordination, and separation allowances.

(a) *Coordination or dismissal allowance.* Coordination or dismissal allowances are payments made to an employee who has been furloughed for a specified period of time during which he or she continues in an employment relationship and remains subject to call. Such pay is remuneration with respect to each day in the month or other period for which it is payable. The employer shall be held liable to the Board for any benefits paid to the employee and found recoverable under section 2(f) of the Railroad Unemployment Insurance Act by reason of the payment of any such allowances or other pay for the same days for which the Board paid benefits.

(b) *Separation allowance.* A separation allowance or severance payment made to an employee who voluntarily or involuntarily terminates his or her employment relationship is not remuneration with respect to any day after the employment relationship is severed. An employee who is paid a separation allowance, whether in a lump sum or in installments, is disqualified by section